Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

self by proof that the goods were exempt from attachment. *Bacon* v. *Daniels,* 116 Mass. 474; *Stevens* v. *Stevens,* 39 Conn. 474. Nor may the debtor set up as a defense that the attachment was nominal, that the goods were never really seized nor delivered to him. *Jewett* v. *Torrey,* 11 Mass. 219; *Lyman* v. *Lyman,* 11 Mass. 317; *Morrison* v. *Blodgett,* 8 N. H. 238; *Spencer* v. *Williams,* 2 Vt. 209; *Lowry* v. *Cady,* 4 Vt. 504; *Allen* v. *Butler,* 9 Vt. 122; *Bowley* v. *Angire,* 49 Vt. 41; *Stimson* v. *Ward,* 47 Vt. 624; *Phillips* v. *Hall,* 8 Wend. 610; *Webb* v. *Steele,* 13 N. H. 230; *Howes* v. *Spicer,* 23 Vt. 508. In Vermont a construction which in its implications is contra to the general doctrine and is not necessary to protect the officer is put upon the contract in holding that the receipt is conclusive upon the receiptor as to the goods, their value, and their ownership. *Bowley* v. *Angire,* 49 Vt. 41; *Catlin* v. *Lowry,* 1 D. Chipman 396. H. H.

---

THE WISCONSIN MARRIAGE LAW UPHELD.—All doubts as to the constitutionality of the so-called "Wisconsin Eugenics Law" were resolved in its favor when the Supreme Court of Wisconsin in *Peterson* v. *Widule, County Clerk* (Wis. 1914), 147 N. W. 966, reversed the decision of the lower court. The Statute (ST. 1913, § 2339M) requires all male persons applying for a marriage license to file with the county clerk a physician's certificate that they are free from acquired venereal disease 15 days prior to the application. The action was mandamus to compel issuance of a license, petitioner being unable to secure an examination for the fee provided in the statute. The lower court gave judgment for petitioner and the county clerk appealed. The Supreme Court held that the statute is constitutional and is a valid exercise of the police power. It is neither an unreasonable restriction on the right to marry, nor a restraint of the right to enjoy life, liberty and the pursuit of happiness, nor is it based on an unreasonable classification because it does not require the same certification on the part of the women, all of which reasons were urged against it. The Wasserman test is not required as by words "recognized tests" the legislative intent was to include only those tests which can be made by a physician with the ordinary laboratory apparatus.

This decision shows the tendency of modern legislation and legal thought to find a solution for the elimination of evils springing up in a complex civilization and to create laws which will subserve the public good and at the same time eliminate as far as possible any substituted evils. This latter forms the basis of the chief criticisms against the law and is pointed out in a concurring and a dissenting opinion. The former censures the law severely, calling it "about as silly and obnoxious a piece of legislation as could be devised." It is also claimed against the wisdom of such a law that it tends to discourage marriage rather than to prevent the evil it was designed to remedy; that it tends to increase immorality rather than prevent it and, so favors an increase of venereal diseases, and that no necessity for it exists, as any prospective bride may amply protect herself as well as the legislation will protect her, and at the same time the half imputed stigma which the

proceedings casts upon the male, as well as any resulting scandal which might arise, would be obviated in the absence of the law. The question of the efficacy of this legislation is a very close one and cogent reasons to support both sides of the case may be advanced. Its ultimate benefit or detriment is a question which can only be settled in the future by a close comparison of statistics before and after the enforcement of the law.

This is the first case decided on this direct point, but the principles upon which the decision rests are well settled. The State has an inalienable right by virtue of the police power to pass all laws "to secure the general health, comfort and prosperity of the state." COOLEY, CONSTITUTIONAL LIMITATIONS, 830; FREUND, POLICE POWER, § 124. It is in the same class as laws prohibiting marriage with epileptics, (*Gould* v. *Gould,* 78 Conn. 242), laws ordering the destruction of tubercular cattle (*Houston* v. *State,* 98 Wis. 481), laws requiring vaccination (*Blue* v. *Beach,* 155 Ind. 121) and the like, all of which have generally been upheld, having in view the public welfare.

It is interesting in connection with the point raised in the main case to note the statutes passed in several states, providing for the sterilization of criminals and defectives, some of which have been declared unconstitutional. See 12 MICH. LAW REV. 400. Many states have passed laws regulating marriages and declaring marriages void with insane persons, epileptics, idiots, habitual drunkards and the indigent, but there were few states prior to Wisconsin which made any regulation as to venereal diseases and in these states the statute operates as a bar to marriage when the person is afflicted, but no means is provided for the discovery of the disease, and as a result the laws have been of little real value. A note on the state laws regulating marriage will be found in 4 JOURNAL OF CRIM. LAW 422.

M. K. B.

---

BREACH OF CONTRACT BY REFUSAL TO PERFORM.—The Courts of Appeal in Kentucky and Texas have recently handed down two conflicting opinions regarding what each considers a sufficient refusal to perform by one party to a contract, to allow the adverse party to sue for breach of the contract. In *Elder* v. *Offutt,* 165 S. W. 424 the Kentucky court holds that by continually protesting and objecting, even though actually performing the contract, the defendant had refused sufficiently to give the plaintiff a good cause of action. In *Provident Savings Life Assurance Society* v. *Ellinger,* 164 S. W. 1024 the Texas court on the other hand lays down the hard and fast rule that a contract can be breached only in one of three ways, viz: by failure to perform, by a present positive declaration of an intention not to perform and an acceptance of such declaration by the other party as a repudiation of the contract before performance is again entered upon, and by a positive inability to perform. In *Elder* v. *Offutt* the latter had purchased a pair of scales for the weighing of live stock. He sold a half interest to A, who in time sold it to one Stone. Later Offutt sold his remaining interest to Stone, the consideration being sixty dollars and a perpetual right to use the scales free of charge in whatsoever hands they might be. About a year later Stone sold the scales to Elder who